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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,757	12/05/2003	Jeffrey Lewis Powers		3203
7590	01/21/2005			
Dennis W. Davis 427 East Washington Avenue Eustis, FL 32726			EXAMINER CHAPMAN, GINGER T	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/729,757

Applicant(s)

POWERS ET AL.

Examiner

Ginger T Chapman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 28-46 is/are pending in the application.
- 4a) Of the above claim(s) 32-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-31 and 36-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/5/03 & 3/7/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

This application contains claims directed to the following patentably distinct species of the claimed invention:

- I. figs. 3a, 3b, 6b, 23, 24 and 25 (squeeze actuated dispenser);
- II. figs. 1b, 7, 8, 12a, 12b, 13, 14 and 22 (plunger actuated dispenser);
- III. figs. 6b, 6c, 6d, 9a, 9b and 10 (pressure multiplying nozzle);
- IV. fig. 15 (cartridge-based actuator);
- V. figs. 16 and 17 (siphon pump-based actuators);
- VI. fig. 18 (screw mechanism based actuator);
- VII. fig. 19 (thumbwheel actuator);
- VIII. fig. 20 (ratchet mechanism actuator);
- IX. fig. 21 (rotary compression based actuator);
- X. figs. 23, 24, 25, 26a and 26b (push-button actuator); and
- XI. figs. 5a, 5b, 5c, 27, 28, and 29 (dispensers having wristwatch bands).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

During a telephone conversation with Dennis Davis on January 6, 2005 a provisional election was made with traverse to prosecute the invention of Species 1, amended claims 28-31 and 36-46. Affirmation of this election must be made by applicant in replying to this Office action. Claims 32-35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### *Specification*

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that **the abstract not exceed 150 words in length** since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

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The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it has more than 150 words.

Correction is required. See MPEP § 608.01(b).

The use of the trademark VELCRO has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology such as "hook and pile material".

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks. See MPEP § 608.01(v).

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28, 31, 36, 37, 40 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,927,548 issued to Villaveces.

As best depicted in Figures 6 and 7, with respect to claims 28, 37 and 44, Villaveces discloses an extremity-attachable device for storing and discharging skin treatment material comprising a housing (12) having a reservoir (16) containing skin treatment material in packets (54) such as containers or cartridges (col. 4, line 19) which may be replaceable (94) (see also col. 5, line 17 and col. 6, line 24) and further including squeeze actuation means (col. 4, line 47),

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dispensing outlet (30), flow control means preventing leakage of material ((36, 40, 46); col. 4, lines 21-27) and extremity attachment means (Figs. 20-22 (119, 120, 121)).

With respect to claims 36 and 40, Villaveces discloses in Figures 20-24 the extremity attachment means may be removably attached to the device (Fig. 21 (121)) in order to attach the device about the wearer's wrist (Fig. 22) by means of wrist-band (119) or neck (Fig. 20) (col. 7, lines 20-33).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29, 30, 38 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villaveces in view of U.S. Patent No. Re 35,187 issued to Gortz.

Villaveces disclose the body-worn dispenser for dispensing skin disinfecting material but does not expressly disclose check valve-based flow control means.

Gortz discloses a device for dispensing fluids such as liquids. In particular, Gortz teaches an analogous dispenser useful for flowable products of various viscosities such as skin treatment materials (col. 3, line 8 and line 36). As depicted in Figures 2 and 3, the dispenser (5) includes flow control means comprising a valve means (40) which may be a one-way valve such as a check valve (col. 6, lines 56-58) and a resilient internal bladder (10) for segregating an air

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volume internal to the dispenser from the volume of the treatment material contained within the device in order to provide motive force to dispense fluid through the valve.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized the alternative one-way check valve as taught by Gortz for dispensing material through the dispensing outlet of Villaveces thus preventing leakage by controlling the flow of liquids by allowing the fluid being dispensed to flow in one direction only and the selection of any of these check valves would be within the level of ordinary skill in the art.

With respect to claim 38: Villaveces discloses the claimed dispenser except for the internal bladder. Gortz teaches that it is known in the dispensing art to utilize a resilient internal bladder in a positive-pressure dispensing device in order to allow the fluid to be dispensed whether the squeeze dispenser is held upright or inverted. Therefore, to have utilized the internal bladder of Gortz in the dispenser of Villaveces would have been obvious to one having ordinary skill in the art at the time the invention was made since Gortz teaches at col. 1, line 49 that such a modification would provide constant flow characteristics of the fluid to be dispensed.

Claims 39, 41, 43 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villaveces in view of U.S. Patent No. 4,058,237 issued to Luke.

With respect to claim 39, 41 and 46: Villaveces discloses a wrist worn dispenser but lacks a capped outlet capable of adjusting the character of the dispensed material to flow from streaming flow to spray.

As depicted in Figures 2 and 3, Luke discloses a wrist worn dispenser simulating a time-displaying wrist watch and having a fluid tight cap ((9); col. 2, line 16) and wherein the flow of

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fluid through the outlet (14) and nozzle (5) is controlled by valve (16) and biased control knob (3) such that turning control knob (3) produces a jet stream or a spray of protective fluid (col. 2, lines 46-47). Therefore, to have utilized the capped and adjustable nozzle of Luke in the dispensing outlet of Villaveces in order to allow the user of the dispenser to select an output flow that is either streaming or spraying would have been obvious to one having ordinary skill in the art at the time the invention was made.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Villaveces in view of Luke and as further viewed with U.S. Patent No. 5,815,467 issued to Deering.

Villaveces fails to teach a dispenser having a time display. As shown in Figure 1, Luke teaches a dispenser having a simulated time display. Villaveces discloses the claimed invention except for the simulated watch such that to the casual observer the dispenser would appear to be an ordinary wrist watch thus allowing the user of the hand sanitizing fluid to have the option of sanitizing the hands after a handshake with a person in an undetected manner without conveying a disdainful message to that person in so doing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the wrist-worn dispenser of Villaveces with the time display of Luke in order to provide the user of the device with the ability to wear the dispenser in an undetected manner.

Villaveces, as modified above, fails to teach a wrist-worn dispenser wherein the time display exhibits functionality associated with time keeping. Deering teaches a dispenser with a wristband for attachment to the wrist and having a functional time display, i.e. a watch (col. 2, lines 16-17; Fig. 1) thus allowing the user of the dispenser to wear the dispenser in a casual undetected manner. Therefore, to have employed the functional watch of Deering in place of the



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simulated watch of Luke in order to allow the user of the dispenser to wear the dispenser in an undetected manner would have been obvious to one having ordinary skill in the art at the time the invention was made since applicant has not disclosed that time keeping solves any stated problem or is for any particular purpose and it appears that the dispensing operation of the device would function equally well with a simulated time display.

Claims 42 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villaveces in view of U.S. Patent No. 4,768,688 issued to Harrigan.

Villaveces discloses a wrist-worn dispenser having a reservoir but fails to teach a dispenser wherein the wrist-attachment means contains the fluid such that squeezing the attachment means can dispense the fluid. As depicted in Figure 6, Harrigan discloses a dispenser in the form of a resilient tubular body (110) worn about the user's wrist or ankle and having a cap (119) wherein the interior of the bracelet forms a chamber (24) for receiving, storing and dispensing suntan lotion fluid. Villaveces discloses the claimed invention except for the location of the fluid chamber. Harrigan teaches at column 1, lines 35-38 the desirability of allowing the user of the dispenser to carry skin treatment material on their wrist in the interior of a plastic bracelet without the burden of carrying jars, tubes or bottles. Accordingly, to locate the fluid reservoir of Villaveces in the body of the attachment as taught by Harrigan in order to allow the user of the device to dispense fluid by squeezing the resilient tube rather than fumbling for a small knob while applying slippery or viscous fluid to their fingers would have been obvious to one having ordinary skill in the art at the time the invention was made since it has been held that rearranging parts of an invention involves only routine skill in the art.

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*Conclusion*

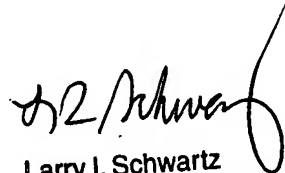
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman  
Examiner, Art Unit 3761

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Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700